

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 20 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

KANKARIA CHMEICAL INDUSTIRES PVT LTD.

Appearance:

1. INCOME TAX REFERENCE No. 20 of 1986
MR.BB NAYAK FOR MR MANISH R BHATT for Applicant.
RESPONDENT SERVED.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

At the instance of the revenue, the following question of law is referred for the opinion of this Court in respect of the assessment years 1977-78 to 1979-80.

"Whether, the Tribunal has been right in law in holding that the assessee is entitled to allowance of depreciation on actual cost of fixed assets without reducing the value in respect of cash subsidy of Rs.3,66,500/- from Government of India ?"

2 The assessee received cash subsidy of Rs.3,66,500/- from the Government of India under the scheme for cash subsidy for new industrial unit set-up in developing or backward areas. The Income Tax Officer reduced the cost of assets, in respect of which the depreciation was claimed, by the amount of subsidy. The C.I.T.(Appeals) directed the Income Tax Officer to consider the cost of the plant without reducing the amount of subsidy from that cost. The Tribunal confirmed the view taken by the C.I.T.(Appeals). Hence, this Reference at the instance of the Revenue.

3 At the time of hearing of this Reference Mr.B.B.Nayak, learned Counsel appearing for the Revenue fairly states that in view of the decision of the Apex Court in C.I.T. vs. P.J.Chemicals, 210 I.T.R.830 the controversy raised herein is concluded against the revenue. Since the subsidy in question was general in nature by way of incentive for setting up the industrial unit in a backward area, the same could not be taken into consideration for reducing the cost of the assets in respect of which the depreciation was claimed. Hence, the Tribunal was right in law in holding that the assessee was entitled to allowance of depreciation on actual cost of fixed assets without reducing the value in respect of cash subsidy of Rs.3,66,500/- from Government of India.

4 The question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue.

5 The Reference is disposed of accordingly with no order as to costs.

(M.S.Shah, J) (D.A.Mehta, J)

m.m.bhatt